

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ELEANOR and ROCCO CIOFOLETTI
and LARRY STOSPAL, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

-vs-

SECURIAN FINANCIAL GROUP, INC.,
MINNESOTA LIFE INSURANCE
COMPANY, SHURWEST, LLC,
SECURIAN LIFE INSURANCE
COMPANY and MINNESOTA
MUTUAL COMPANIES, INC.,

Defendants.

Case No.: 0:18-cv-3025 (JNE/ECW)

**THE SECURIAN DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR AMENDED
PRETRIAL SCHEDULING
ORDER; SECURIAN
DEFENDANTS' PROPOSED
AMENDED PRETRIAL
SCHEDULING ORDER**

Defendants Securian Financial Group, Inc., Minnesota Life Insurance Company, Securian Life Insurance Company, and Minnesota Mutual Companies, Inc. (collectively, the “Securian Defendants”), submit this Proposed Amended Pretrial Scheduling Order pursuant to the Court’s oral directive at the continued IDR hearing held on August 9, 2021 reflected at Dkt. 255. This Proposed Order is intended to supersede Scheduling Order (Dkt. 181) as modified by “Court Minutes” after an IDR conference (Dkt. 233) as further modified by “Court Minutes” after a continued IDR hearing (Dkt. 255).

The Securian Defendants file their own Proposed Amended Pretrial Scheduling Order in Opposition to Plaintiffs’ Motion for an Amended Pretrial Scheduling Order, because the Securian Defendants do not consent to Plaintiffs’ request to file a renewed motion for class certification, either through their Motion or in any subsequently filed

Motion for Leave. Accordingly, the Securian Defendants submit their own Proposed Amended Pretrial Scheduling Order, attached hereto as Exhibit A.

DATED: August 23, 2021

Respectfully submitted,

/s/ Gillian H. Clow

Robert D. Phillips, Jr. (*pro hac vice*)

Kathy J. Huang (*pro hac vice*)

Gillian H. Clow (*pro hac vice*)

ALSTON & BIRD LLP

333 South Hope St., 16th Fl.

Los Angeles, CA 90071

Tel: (213) 576-1000

Fax: (213) 576-1100

bo.phillips@alston.com

kathy.huang@alston.com

gillian.clow@alston.com

Shawn M. Raiter (#240424)

David M. Wilk (#222860)

LARSON • KING

30 East Seventh St., Ste. 2800

St. Paul, MN 55101

Tel: 651) 312-6500

Fax: (651) 312-6618

sraiter@larsonking.com

dwilk@larsonking.com

Attorneys for Defendants

Securian Financial Group, Inc.,

Minnesota Life Insurance Company,

Securian Life Insurance Company and

Minnesota Mutual Companies, Inc.

EXHIBIT A

IT IS ORDERED that the following schedule will supersede the Amended Pretrial Scheduling Order dated January 29, 2021 (Dkt. 181) with respect to the provisions detailed herein and incorporates in their entirety the Orders and directives reflected in Dkts. 233 and 255 and will govern proceedings unless modified pursuant to Local Rule 16.3.

SCHEDULE FOR FACT DISCOVERY

1. Fact discovery shall close on or before **September 10, 2021**.

ADDITIONAL DISCOVERY LIMITATIONS

2. The following discovery limitations apply and shall constitute the only permissible discovery through September 10, 2021:
 - (a) The parties shall comply with all orders and may conduct all discovery allowed as set forth in Dkts. 233 and 255 (attached hereto).

DEADLINE FOR NON-CLASS CERTIFICATION EXPERT DISCOVERY

3. If any party determines that it will call any expert witness at trial whose opinions and report have not already been disclosed in the class certification process, such witnesses shall be disclosed within thirty days of the entry of any order on plaintiffs' renewed motion for class certification and the following schedule will govern such additional expert discovery:
 - (a) Plaintiffs anticipate calling up to 3 experts. The Securian Defendants anticipate calling up to 3-4 experts and Shurwest anticipates calling up to 2-3 experts. Each expert may be deposed only once and only for the time permitted under the Federal Rules of Civil Procedure

unless the parties agree otherwise or otherwise ordered by the Court.

- (b) Disclosure of the identities of expert witnesses under Rule 26(a)(2)(A) and the full disclosures required by Rule 26(a)(2)(B) (accompanied by the written report prepared and signed by the expert witness) and the full disclosures required by Rule 26 (a)(2)(C), shall be made as follows:
 - (i) Identities of testifying experts and disclosures by the party with the burden of proof on or before **September 20, 2021**.
 - (ii) Rebuttal identities of testifying experts and disclosures on or before **October 20, 2021**.
- (c) Expert discovery, including depositions, shall be completed by forty-five days after service of any expert reports served pursuant to 9(b)(ii) above.

NON-DISPOSITIVE MOTION DEADLINES

4. The parties propose the following deadlines for filing non-dispositive motions:

- (a) Except as provided in paragraph 4 below, all non-dispositive motions and supporting documents, including those that relate to fact discovery, shall be filed and served on or before: **September 17, 2021**.
- (b) All non-dispositive motions and supporting documents that relate to non-class certification expert discovery shall be filed and served on or before fourteen days after the close of expert discovery.

DISPOSITIVE MOTION DEADLINES

5. All dispositive motions and supporting documents (notice of motion, motion, memorandum of law, affidavits, and proposed order) shall be filed and served on or before fourteen days after the close of expert discovery. Counsel for the moving party shall call **Cathy Cusack**, Judge Ericksen's Courtroom Deputy at 612-664-5890 to schedule the hearing for the dispositive motion. Upon receipt of a hearing date (or an instruction that the hearing will take place at a date and time to be determined by the Court), the moving party shall immediately file and serve the dispositive motions and supporting documents.

6. The parties shall comply with Local Rule 7.1 and the Electronic Case Filing Procedures Guide, Civil Cases. When a motion, response or reply brief is filed on ECF, two paper courtesy copies of the pleading and all supporting documents shall be mailed or delivered to **Cathy Cusack**, Courtroom Deputy, at the same time as the documents are posted on ECF.

SETTLEMENT

7. A telephone status conference to update the Court on discovery and the parties' positions as to when a settlement conference before the Court would be productive is scheduled for _____, 2021, at _____. Chambers will circulate dial-in informational advance of the status conference.

8. The Court may sua sponte schedule status conferences or settlement conferences to explore options for alternative dispute resolution. In addition, the Court will in its discretion consider joint or *ex parte* requests that the Court schedule or otherwise assist in settlement negotiations, provided that the content of any *ex parte* request shall be

strictly limited to the topic of settlement and shall not comment on any matter that may come before the Court for a ruling. Such requests shall be submitted by email to Magistrate_Wright_Chambers@mnd.uscourts.gov. The Court will treat *ex parte* requests as confidential unless otherwise advised.

TRIAL

The case will be ready for a jury trial on or about **March 17, 2022**. The anticipated length of trial is 8-14 days.

Dated: _____, 2021

ELIZABETH COWAN WRIGHT
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2021, I caused a copy of **THE SECURIAN DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR AMENDED PRETRIAL SCHEDULING ORDER; SECURIAN DEFENDANTS' PROPOSED AMENDED PRETRIAL SCHEDULING ORDER** to be served upon the following counsel in the manner described below:

Via the Court's CM/ECF system:
[Gillian H. Clow]
[gillian.clow@alston.com]

/s/ Gillian H. Clow